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JUL 13 2007

OFFICE OF PETITIONS

In re Application of :
David M. Solak :
Application No. 10/792,357 : DECISION ON PETITION
Filed: March 4, 2004 :
For: RF SMOKE SENSING SYSTEM :
WITH INTEGRATED SMOKE/HEAT :
SENSING CHRISTMAS ORNAMENT :
TRANSMITTER :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 30, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed February 6, 2006, which set a shortened statutory period for reply of three (3) months. A two (2) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on July 7, 2006. A Notice of Abandonment was mailed on September 26, 2006.

A petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and

fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C).

The petition fails to satisfy items (1) and (3) above.

As to item (1) above, the reply submitted with the petition is a Notice of Appeal and fee of \$250. However, the \$250 fee submitted was returned as unpaid. Accordingly, the Notice of Appeal is improper.

As to item (3), the statement of unintentional delay is not acceptable at this time since it appears that this application was intentionally abandoned. In this regard, the following statement appears in a communication received by applicant on August 4, 2006: "The reason I am filing for extension is: Upon planning to abandon I learned of the possibility of actually being able to file a CIP. * * * I am respectfully confident that I may have a good chance of receiving the patent through the CIP process."

A review of the records for this application indicate that a continuation-in-part application (Application No. 11/799,905) was filed on May 4, 2007 and was not filed within the extendable period set in the final Office action of February 6, 2006. It appears now that applicant is attempting to proceed with prosecution in this application by the filing of a Notice of Appeal, albeit improper for the reason stated above, despite his intent to abandon the application in favor of the filing of a continuation-in-part application. Any petition under 37 CFR 1.137(b) must satisfy the requirement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." The Office may require the filing of a continuing application to meet the reply requirement of 37 CFR 1.137(b)(2), especially where, as here, applicant intended to file a continuation-in-part application rather than proceed with prosecution of this application. While applicant intended to abandon this application but not the invention by his intent to file a continuation-in-part application, the statement of unintentional delay will only be accepted if the reply to continue prosecution is a statement that revival of this application is requested solely to establish copendency with the continuation-in-part application (Application No. 11/799,905, filed May 4, 2007).

Further, as the check for the Notice of Appeal fee was returned as unpaid, a \$50 fee for the returned check is required.

The request to change the correspondence address signed by John D. Gugliotta will not be entered since there is no indication that a power of attorney by applicant to Mr. Gugliotta or the attorneys associated with Customer Number 33055 was ever submitted in this application.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450


By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the Electronic Filing System of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2318.


Frances Hicks
Petitions Examiner
Office of Petitions